IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 2551 of 2007(D)

PETITIONER:

MALATHI J.RAI, W/O. JAGANATHA,
RESIDING AT SABARKAJE HOUSE, NETTANIGE VILLAGE,
KASARAGOD TALUK AND DISTRICT, P.O. NETTANIGE.

BY ADV. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA
SRI.B.R.MURALEEDHARAN
SRI.P.N.ANOOP

RESPONDENTS:

1.KERALA STATE ELECTION COMMISSION,
TRIVANDRUM.

2.THE RETURNING OFFICER,
BELLUR GRAMA PANCHAYAT AND ADDITIONAL COMMERCIAL
TAX OFFICER NO.I, KASARAGOD P.O., KASARAGOD.

3.SUHARA ABBAS ALI, W/O. ABBAS ALI,
RESIDING AT KANAKATHODI HOUSE, NETTANIGE VILLAGE,
KASARAGOD TALUK AND DISTRICT, P.O. KINNINGARU.

4.NARAYANI, W/O. SATHYAN,
RESIDING AT KATTA HOUSE, NETTANIGE VILLAGE AND
KASARAGOD TALUK AND DISTRICT, P.O. NETTANIGE.

5.BELLUR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, BELLUR,
(VIA) MULLERIA, KASARAGOD DISTRICT.

R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.2551 of 2007

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Dated: 23rd January, 2007

JUDGMENT

Even though it was very persuasive submissions which were addressed before me by Mr.K.Shri Hari Hao, learned counsel for the petitioner, I am not persuaded to hold that the Election Commission is at fault in issuing Ext.P6. The judgment of the Division Bench of this court in **Shaila v. Kerala State Election Commission** (2002 (3) K.L.T. 857) was a case where the Division Bench interpreted Section 12(8) of the Kerala Municipalities Act and Rule 4(3) of the Kerala Municipalities (Election of Chairperson and Deputy Chairperson) Rules, 1995 which corresponds to Section 153(16) of the Kerala Panchayat Raj Act and Rule 5(2) of the Kerala Panchayat Raj (Election of President and Vice President) Rules 1995 and held that the Election Commission was perfectly justified in taking steps for filling up the casual vacancy which had arisen in the office of the Chairperson of the Municipality some three weeks prior to the date. In the instant case, I find that the vacancy arose on 7.11.2006 and meeting has now been called under Ext.P6 to 30.1.2007 which is more than two months after the date of occurrence of the vacancy. May be, the writ petitioner has an arguable case in the appeal in the light of Ext.P3 Circular which is now sought to be placed on record

before the District Judge through Ext.P4 application. But since I am unable to find any infirmity about Ext.P6, I am not inclined to stay the election which is now scheduled as per Ext.P6 for the 30th instant. However, the Writ Petition will stand disposed of granting the following reliefs to the writ petitioner:

The District Judge, Kasaragod who is now in seisin of Ext.P1 C.M.A. and Exts.P2 and P4 interlocutory applications will take them up and dispose of Ext.P4 application first and thereafter dispose of Ext.P2 C.M.A. at his earliest and at any rate within six weeks of receiving a copy of this judgment. It is needless to mention that the result of the Election which is proposed to be held as per Ext.P6 will be dependant on the outcome of Ext.P1 C.M.A.

srd **PIUS C.KURIAKOSE, JUDGE**